

May 3, 1976

CONGRESSIONAL RECORD — HOUSE

H 3839

Mr. McKAY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. AUCOIN) is recognized for 10 minutes.

Mr. AUCOIN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

NOTIFY THE VICTIMS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Ms. ABZUG) is recognized for 10 minutes.

Ms. ABZUG. Mr. Speaker, the Government Information and Individual Rights Subcommittee, which I chair, has begun hearings on H.R. 12039, 13192, and 169. These bills would require that the victims of such illegal and improper programs as COINTELPRO—an FBI program, CHAOS—CIA, burglaries—FBI and CIA, mail openings—FBI and CIA, cable interceptions—National Security Agency, and the special service staff of the IRS be notified that they were targets or victims of these activities, told of their rights under the Privacy Act and the Freedom of Information Act, and afforded the option of having the unlawfully gathered files destroyed.

Book II of the report of the Senate Select Committee on Intelligence, which was released last Wednesday, includes a recommendation that is almost identical to what my bills, H.R. 12039, H.R. 13192, and H.R. 169, would require. The text of that recommendation follows:

Recommendation 90.—The Freedom of Information Act (5 U.S.C. 552(b)) and the Federal Privacy Act (5 U.S.C. 552(a)) provide important mechanisms by which individuals can gain access to information on intelligence activity directed against them. The Domestic Intelligence Recommendations assume that these statutes will continue to be vigorously enforced. In addition, the Department of Justice should notify all readily identifiable targets of past illegal surveillance techniques, and all COINTELPRO victims, and third parties who had received anonymous COINTELPRO communications, of the nature of the activities directed against them, or the source of the anonymous communication to them.

LEGISLATION TO EXPEDITE LICENSING OF NUCLEAR POWER-PLANTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. PRICE) is recognized for 20 minutes.

Mr. PRICE. Mr. Speaker, today I am introducing a bill which is intended to make needed improvements in the procedures for the licensing of nuclear powerplants. Cosponsoring the bill with me are Representatives YOUNG of Texas, ANDERSON of Illinois, LUJAN, and HUNSHAW.

The objectives of the bill are the same as those of H.R. 3995, which I introduced last year. The improvements in the licensing process would have two major

objectives: First, to reduce the time required to construct and bring a nuclear powerplant to commercial operation without sacrificing the quality and thoroughness of the Nuclear Regulatory Commission's safety and environmental reviews; and second, to provide a more meaningful opportunity for public participation in the Commission's licensing proceedings.

While improving the opportunity for effective public participation and preserving the quality and thoroughness of the Commission's licensing reviews, the bill provides new licensing authority under which proposed sites for nuclear facilities can be reviewed and approved in advance of a formal application to construct the facility. It is the lack of this authority which is the major obstacle to further reducing the long lead-time for nuclear powerplants.

An understanding of the need for legislative change begins with a brief look at the existing statutory structure for the licensing of nuclear powerplants. The Atomic Energy Act of 1954, as amended, provides for a two-step licensing process for nuclear powerplants. As the first step, a construction permit must be obtained from the Commission which authorizes the construction of the proposed plant at the site where it will be operated. The construction permit stage of the licensing process focuses on the preliminary design of the proposed plant and the suitability of the proposed site from the standpoint of both radiological health and safety and general environmental considerations. It is at this stage that the environmental impact statement called for by the National Environmental Policy Act of 1969 is prepared. A mandatory formal on-the-record public hearing must be held by an Atomic Safety and Licensing Board appointed by the Commission prior to the issuance of any construction permit for a nuclear powerplant.

The Atomic Energy Act also provides that no person may operate a nuclear powerplant without first obtaining an operating license from the Commission. Thus, the second step which must be completed in the licensing process is the issuance of an operating license. The operating license review focuses on the final design of, and detailed procedures for, the nuclear powerplant. A public hearing is held before the issuance of any operating license, if in the judgment of the Commission a person whose interest may be affected presents a valid request for such a hearing.

The Advisory Committee on Reactor Safeguards a statutory committee of independent experts on nuclear safety, is required by the Atomic Energy Act to review each application to construct and operate a nuclear powerplant, and to submit a public report thereon to the Commission.

I continue to believe that the present two-step licensing system is unduly rigid and that flexibility must be introduced into the licensing provisions of the Atomic Energy Act so that other coherent and rational licensing approaches may be followed. In doing so, the guiding principles must be:

First. There must be no reduction at all in the exercise and achievement of the important regulatory responsibility which the law places on the Nuclear Regulatory Commission to assure that safety, the common defense, and security and the environment are all protected.

Second. The existing opportunity for proper public participation in the licensing process must not be diminished.

Third. The public and open conduct of the licensing process must be continued.

While these fundamentals must be preserved, the licensing process can and should provide for the most efficient and expeditious utilization of resources. Such a goal is well worth seeking in normal times. It is now an imperative goal in view of our current economic problems, caused in large measure by our growing dependence on foreign sources of oil. It will require the full use of nuclear power, together with all other presently available domestic sources and other sources now being developed, to enable this Nation ultimately to become adequately self-sufficient in its energy supplies.

I believe that if the bill which I am introducing is enacted, the 10 years now required to bring a nuclear powerplant on line should ultimately be reduced to 6 or 7 years. The savings to the public through elimination of unnecessary delay in the licensing of nuclear powerplants should be significant, both in monetary terms and in terms of the ready availability of the necessities of life which are increasingly dependent on a reliable and adequate energy base.

This legislation is one step which, along with perhaps many others, will move our country in the direction of energy sufficiency so that our people and their Government will always be in a position to be the master of their destiny and the architects of their own national policies and priorities.

Mr. Speaker, I include in the RECORD at this point a section-by-section analysis of the bill:

SECTION-BY-SECTION ANALYSIS

1. Section 101 of the bill adds a new section 192 to the Atomic Energy Act of 1954, as amended. As stated in the preamble of section 192, the purpose of the section is to provide policy guidance to the Commission which is designed to improve the efficiency and effectiveness of the licensing process for utilization and production facilities and to eliminate any unnecessary duplication and delay in the approval process required for these facilities.

Subsection 192a.—Provides policy guidance to the Commission on public participation and the disclosure of information to the public. The subsection makes it the policy of the Commission to candidly and expeditiously disclose to the public information which it has concerning the radiation risks which may be associated with production and utilization facilities. The subsection requires that such disclosure, to the greatest extent feasible, should be in non-technical language. New section 192a. also makes it the policy of the Commission, subject to applicable disclosure limitations authorized by law, to make available to the public promptly all significant radiological safety information, including technical studies and reports, to simultaneously provide to all parties to a

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Commission licensing proceeding copies of all documents and written communications to or from the Commission which relate to the application being considered in the proceeding, and to open to the public all meetings between the Commission and any party to the proceeding which will include discussions of questions significantly affecting the radiological health and safety features of the facility.

New subsection 122b.—Provides policy guidance to the Commission for expediting licensing proceedings. The subsection makes it the policy of the Commission, consistent with its obligations to provide adequate protection to the public health and safety to provide for the full and equitable adjudication on the basis of an adequate record developed in a hearing at which each party has been given a fair opportunity to present its case, to assure that its licensing proceedings are conducted as expeditiously as possible. In particular, the new subsection urges the greater use of pre-hearing procedures to improve the effectiveness of licensing hearings by defining and shaping the genuine issues of fact to be considered.

Subsection 122c.—Provides policy guidance to the Commission for achieving finality in its licensing determinations. The subsection makes it the policy of the Commission to achieve finality in its determinations by applying the essential principles of the judicial doctrines of *res judicata* and collateral estoppel to its licensing proceedings. Applying those principles, the Commission would exclude from a licensing proceeding any issue which had already been decided or which could have been raised or decided in a prior proceeding concerning the same facility, site or design on the basis of information reasonably available at that time unless the person seeking to raise the issue shows to the satisfaction of the Commission that there should be some further consideration to determine whether there should be some modification to the facility or whether some other action should be taken which will provide substantial additional protection to the public health and safety, the common defense and security, or the environment. The Committee understands that the Commission, through its Atomic Safety and Licensing Appeal Board, has already applied the doctrines of *res judicata* and collateral estoppel to Commission licensing proceedings. Nevertheless, should there be any inconsistency between the application of the policy contained in new subsection 122c. and the Commission's prior determinations on the application of the judicial doctrines, the Committee's intent is that the policy contained in the bill be applied consistently with the principles of due process of law.

Subsection 122d.—Provides policy guidance to the Commission concerning early notice to the public of a utility's intent to obtain a license or permit for a nuclear facility or site. The subsection authorizes the Commission to require any person seeking to obtain notice of its intent to do so in accordance with rules or regulations which the Commission may adopt. Such notices of intent would be published in the Federal Register and, together with other regulations which the Commission may adopt, would facilitate greater public involvement in a utility's early site planning program.

Subsection 122e.—Provides policy guidance to the Commission on cooperative arrangements with other Federal agencies. As a further step toward improving coordination at the Federal level between the Commission and other agencies involved in the licensing of nuclear facilities on aspects other than radiological health and safety, the new subsection makes it the policy of the Commission to seek arrangements with such other agencies to permit the preparation by the Commission of a single detailed statement in accordance with section 102(2)(c)

of the National Environmental Policy Act of 1969 covering all Federal actions related to the facility.

Subsection 122f.—Provides policy guidance to the Commission on Federal-State cooperation in the approval of the environmental aspects of a proposed nuclear facility. In areas other than the protection of the public health and safety and the common defense and security—those areas which are the exclusive province of the Nuclear Regulatory Commission—the subsection makes it the policy of the Commission to coordinate its licensing and permit reviews and proceedings with any related state agency reviews or proceedings in order to improve the efficiency and effectiveness of those reviews. The subsection also makes it the policy of the Commission, consistent with its obligations under the National Environmental Policy Act of 1969, to avoid unnecessary duplication between Commission and state environmental reviews and take into account in Commission proceedings data on the environmental costs, benefits and alternatives associated with the facility which have been developed by state agencies.

Section 102 of the bill requires the Nuclear Regulatory Commission, in cooperation with other Federal and State agencies, to conduct a study to identify additional procedures for improving Federal and State participation in the review and approval of the environmental aspects of sites for nuclear facilities. The study, which would focus on improving the efficiency of environmental decision-making on facility sites, would consider all aspects of site approval and review other than those within the exclusive province of the Nuclear Regulatory Commission—those related to radiological health and safety and the common defense and security.

Section 103 of the bill adds Section 193 to the Act which includes additional licensing authority for the issuance of site permits, the issuance of a combined construction permit and operating license, and the issuance of an interim license to operate a nuclear facility pending the issuance of the full-term license provided specific requirements are found to be satisfied by the Commission. In addition to this new licensing authority, the section, for the sake of completeness and in order to avoid any ambiguity regarding the totality of licensing actions which the Commission is authorized to take under this Act, includes certain licensing authority which the Commission now has under the present Atomic Energy Act of 1954, as amended.

Paragraph (1) of subsection 193.—Authorizes any person to file a written application for separate approval of a site as suitable for one or more utilization or production facilities even though no application for a construction permit or a combined construction permit and operating license has been filed with the Commission. Under this procedure, States or other entities, which do not contemplate constructing or operating nuclear powerplants on their own account may apply to have sites for these facilities approved in advance of a utility's decision to construct a facility. This subsection provides that the Commission shall specify by rule or regulation the information to be supplied by the applicant for a site permit. It also empowers the Commission, on the basis of such sitting criteria and other requirements as it may by rule, regulation or order establish, to issue site permits subject to appropriate conditions or to deny site permits. In developing these requirements and criteria, it is expected that the Commission will be guided both by considerations of radiological health and safety and common defense and security set forth in the Atomic Energy Act of 1954, as amended, as well as by considerations in other applicable authority including the National Environmental Policy Act of 1969. The Commission is also required to issue rules and regu-

lations setting time periods for the duration of site permits.

Paragraph (2) of subsection 193 a.—Permits applicants for construction permits or combined construction permits and operation licenses who plan to build and operate a facility on a site for which a valid site permit is outstanding, to engage in certain preliminary site preparation and limited construction activities while the construction permit application is being reviewed. This is subject to any order which the Commission might issue, as well as to the Commission's rules and regulations. This procedure which is separate and apart from the procedure contained in subsection 193 b. of the Act, will permit construction of the facility to begin immediately upon issuance of the construction site permit, the essential preparatory work having been completed. This is accomplished under procedures which provide full assurance that the environment will be adequately protected. The preliminary work may only be performed on sites which have been previously approved by the Commission following a full environmental hearing and review on the adequacy of the site. The types of preliminary construction work which may be conducted are limited to those provided for by the Commission's rules and regulations. It is anticipated that the work will be similar in scope to that permitted under the established limited work authorization procedure which is restated in subsection 193 b. Safety-related construction activities under this paragraph could not continue beyond one year unless the Commission, for good cause shown, extends that period.

Subsection 193 b.—Confirms and broadens somewhat the Commission's existing authority under the rule-making powers of the Act to permit applicants for construction permits or for combined construction permits and operating licenses to begin site preparation work and limited construction activities at their own risk prior to the issuance of a construction permit either alone or in combination with an operating license.

Unlike paragraph (2) of subsection 193 a., the procedures in this subsection do not require the existence of a valid site permit. The procedures are, however, carefully drawn to assure that the activities authorized are without any adverse effect on either safety or environmental issues. Authorization to conduct such activities may be issued by the Commission only after environmental issues have been adequately resolved and requisite findings required by the National Environmental Policy Act of 1969 prior to the issuance of any construction permit have been made. Moreover, the Commission would also have had to find that there is reasonable assurance that the proposed site is suitable from a radiological health and safety standpoint for a facility of the general size and type proposed. If authority to undertake safety-related construction activities is also requested, the Commission is required to find whether that these activities involve no significant unresolved public health and safety issues. The types of safety-related activities include such things as excavation, pouring foundations and related workup to finished ground level. This subsection also provides that any safety-related construction activities which are undertaken shall not continue beyond a one-year period unless the Commission, for good cause shown, extends that period. The Commission is also required to publish in the Federal Register notice of receipt of any request for authorization to conduct such site activities. The Commission must provide persons whose interests may be affected with an opportunity for hearings on all NEPA issues, and on the question of the suitability of the site from a radiological health and safety standpoint. Where safety-related work is involved, an opportunity for hearing on any sig-